Supreme Court, U.S.
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JUN 10 1994
OFFICE OF THE CLERK

IN THE SUPREME COURT

OF THE UNITED STATES

Supreme Court Docket No. 93-1824

COMMONWEALTH OF PENNSYLVANIA,

Petitioner

vs.

JOHN DOMINIC TRAVIS,

Respondent

MOTION FOR LEAVE TO PROCEED ON PETITION FOR WRIT OF CERTIORARI IN FORMA PAUPERIS

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Attorney for Respondent

IN THE SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA, :

vs. : No. 93-1824

JOHN DOMINIC TRAVIS, :

RESPONDENT :

MOTION FOR LEAVE TO PROCEED ON
PETITION FOR WRIT OF CERTIORARI IN FORMA PAUPERIS

1. Respondent is John Dominic Travis who currently resides in Luzerne County, Pennsylvania.

2. Respondent, pursuant to an Order of the Superior Court of Pennsylvania, was released from incarceration at the State Correctional Institution at Dallas on March 1, 1994.

3. Respondent had been incarcerated from the time of his arrest on July 13, 1990 until the aforesaid discharge.

4. Petitioner, the Commonwealth of Pennsylvania, has filed a Petition for Writ of Certiorari with the Supreme Court of the United States with this Honorable Court on May 16, 1994.

5. Respondent has been permitted to proceed in forma pauperis on his appeal from the judgment of sentence to the Superior Court of Pennsylvania and in all subsequent proceedings before the Pennsylvania Appellate Courts.

6. At all times since the institution of the criminal proceedings against the Respondent which are the subject of the Writ of Certiorari, the Respondent has been represented by the Office of Public Defender of Luzerne County.

7. Respondent is without any financial means or resources to pay such costs or give security for the filing and proceedings associated with his Petition for Writ of Certiorari filed by the Commonwealth of Pennsylvania.

WHEREFORE, Respondent requests that he be granted leave to proceed in forma pauperis on all matters relating to the Commonwealth of Pennsylvania's Petition for Writ of Certiorari.

Respectfully submitted,

AL FLORA, JR., ESQUIRE
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Attorney for Respondent

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Supreme Court ID 25028

IN THE SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA, :

vs. : No. 93-1824

JOHN DOMINIC TRAVIS, :

RESPONDENT :

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, JOHN DOMINIC TRAVIS, being duly sworn, depose and say that I am the Respondent i the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress and that the issues which I desire to present on appeal are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Area you presently employed? NO

(a). If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer._____

(b). If the answer is no, state the date of your last employment and the amount of salary and wages per month which you received.

7-12-90 $900.

2. Have you received within the past twelve months any income from a business, profession or other form of self employment or in the form of rent payments, interest, dividends or other source? NO (Upon release from prison, Respondent received $54.00 from prison authorities. Respondent was released on March 1, 1994.)

(a) If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? NO

(a) If yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing? NO

(a) If the answer is yes, describe the property and state its approximate value. _____

5. List the persons who are dependent upon you for support and state your relationship to those persons. NONE

_____

I UNDERSTAND THAT A FALSE STATEMENT OR ANSWER TO ANY QUESTIONS IN THIS AFFIDAVIT WILL SUBJECT ME TO PENALTIES FOR PERJURY.

John D Travis
JOHN DOMINIC TRAVIS

SWORN to and subscribed before me
this 8th day of June, 1994. Janet Flora Notary Public

NOTARIAL SEAL
JANET FLORA, NOTARY PUBLIC
WILKES-BARRE, LUZERNE COUNTY
MY COMMISSION EXPIRES JUNE 10, 1994

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefore.

_____

No. 93-1824

IN THE

SUPREME COURT OF THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA,

Petitioner

vs.

JOHN DOMINIC TRAVIS,

Respondent

Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

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RESPONDENT'S BRIEF IN OPPOSITION

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Questions Presented

1.Whether the Petitioner has waived any Federal claims by failing to pursue such claims in the state appellate courts?

2. Whether a determination by a state appellate court that evidence in a state criminal prosecution is insufficient to convict a defendant resulting in vacating a jury verdict of guilt and ordering a defendant discharged, raises a Federal claim sufficient to invoke this Court's appellate jurisdiction?

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TABLE OF AUTHORITIES

Cases Cited:

Smalis v. Pa., 476 U.S. 140, 106 S.Ct. 1745, 90 L.Ed.2d 116(1986)

Street v. N.Y., 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 576(1969)

Statement of Jurisdiction

The judgment of the Supreme Court of Pennsylvania was entered December 14,1993. The Petition for Writ of Certiorari was filed on May 16, 1994 invoking jurisdiction under 28 U.S.C 1257.

Constitutional Provision Involved

The United States Constitition, Article III, Section 2, provides in pertinent part as follows:

> The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the States where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Counterstatement of the Case

On July 13, 1990, John Dominic Travis, Respondent,was arrested and prosecuted in a state criminal proceeding for First Degree Murder and Kidnapping. The kidnapping charge was dismissed pretrial.

Respondent was subsequently convicted by a jury of First Degree Murder and sentenced to life imprisonment. Respondent appealed from the judgment of sentence to the Superior Court of Pennsylvania contending, inter alia, that

the evidence presented at trial was insufficient to sustain the conviction. A panel of the Superior Court vacated the judgment of sentenced and ordered him discharged from further incarceration. Petitioner then filed a Petition for Reconsideration/Reargument of the panel decision which was denied by the Superior Court. The Petitioner subsequently filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania. This Petition was denied.

Upon the Petitioner exhausting its state appellate remedies, Respondent was discharged from the Pennsylvania state correctional institution system on March 1, 1994.

On May 16, 1994, Petitioner filed a Petition for Writ of Certiorari in this Honorable Court contending that Article III, Section 2, of the United States Constitution has been violated as a result of a state appellate court decision overturning a state criminal conviction on grounds of sufficiency of evidence. This issue had not been raised by Petitioner in any state appellate proceeding.

REASONS FOR DENYING THE WRIT

I.

THE PETITIONER HAS WAIVED ITS FEDERAL CONSTITUTIONAL CLAIM.

The Petitioner claims that the Pennsylvania Appellate Courts have somehow violated Article III, Section 2, of the United States Constitution when a state criminal conviction arising from a jury verdict is vacated on sufficiency of evidence grounds. Petitioner raises this claim for the first time in this Court while having failed to raise, brief, or argue the issue below.

If a state court of appeals fails to decide or mention an issue in its opinion, this court must inquire whether that issue was properly presented to the state court. "When...the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this court can affirmatively show the contrary." Street v. N.Y., 394 U.S. 576, 582 (1969).

The Superior Court of Pennsylvania does not address any federal claim raised by the Petitioner; moreover, Petitioner did not allege in any state appellate proceedings that the appellate courts of Pennsylvania did not have the right or power to overrule a jury verdict and reverse a conviction on

sufficiency of evidence grounds. Now in its petition to this court, the Petitioner raises for the first time a claim that the Federal Constitution is violated whenever a state court rules on the sufficiency of evidence in a state criminal prosecution.

The Respondent respectfully submits that the time in which the Petitioner could have raised this spurious claim has long since passed. Petitioner has waived that opportunity, thus this court should deny the Petition for Writ of Certiorari.

II.

THE SUPREME COURT OF PENNSYVLANIA DOES NOT HAVE JURISDICTION TO REVERSE A STATE APPELLATE COURT DECISION WHICH VACATES A JURY VERDICT OF GUILT IN A STATE CRIMINAL PROSECUTION FOR INSUFFICIENT EVIDENCE.

The Petitioner contends that a state appellate court's vacating of a state criminal conviction based on the sufficiency of evidence is contrary to Article III, Section 2, of the United States Constitution.

Respondent asserts that Petitioner does not have a right to a jury trial in a state criminal prosecution under any provision of the United States Constitution. Moreover, determinations as to the sufficiency of evidence in state criminal prosecutions are matters of state law.

This court has accepted a state appellate court definition of what constitutes sufficiency of evidence. More specifically, the court noted "We of course accept the Pennsylvania Supreme Court's definition of what the Trial Judge must consider in ruling on defendant's demurrer." Smalis v. Pa., 476 U.S. 140, 143 11.5. In Smalis, the Trial Judge ruled that the evidence was insufficient to convict, and this court held that the Pennsylvania Courts had the power to set the standard for a sufficiency claim. This court observed further in Smalis at 143 N.6 and 7, that a Court of Appeals' reversal of a conviction for insufficient evidence, whether correct or not, represents a resolution of the offense charged.

The Petitioner seeks two remedies. First, it urges this court to violate principles of federalism to hold that a state appellate court is prohibited from reversing a state criminal conviction for insufficient evidence. Further, it seeks to have this court examine the scope and evidentiary standards by which a state court reviews an insufficiency of evidence claim.

Both of these remedies are constitutionally infirm. Petitioner does not raise a federal claim for which this court can invoke its discretion to grant a Petition for Writ of Certiorari. This court has held, as Respondent as cited above, that a state appellate court has the power to determine a sufficiency claim and that court may lawfully determine the standard and scope of its review. Id.

The power to grant review for insufficiency of evidence and the methods by which a state appellate court determines the outcome are state perogatives and ought not to be disturbed by the Supreme Court of the United States.

Conclusion

Respondent requests that the Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania be denied.

Respectfully submitted,

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